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| APPLICATION NO.                                       | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/658,060  | 09/09/2003  | Reiner Marchthalter  | 10191/3137          | 5497             |
| 26646   | 7590        | 01/25/2005           | EXAMINER            |                  |
| KENYON & KENYON<br>ONE BROADWAY<br>NEW YORK, NY 10004 |             |                      | BUGG, GEORGE A      |                  |
|   |             | ART UNIT             |                     | PAPER NUMBER     |
|   |             |                      |                     | 2636             |

DATE MAILED: 01/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                        |                     |
|------------------------------|------------------------|---------------------|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |
|                              | 10/658,060             | MARCHTHALER, REINER |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |
|                              | George A Bugg          | 2636                |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-5 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 09 September 2003 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | Paper No(s)/Mail Date: _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>09/09/2003</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Drawings*

1. The drawings are objected to because they are labeled with reference numbers only. Please identify each component in the drawing with its proper name. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement-drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the examiner does not accept the changes, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 102***

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1 and 4 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 5,748,473 to Breed et al.

3. Claim 1 recites "***A device for detecting a seating position of a passenger in a seat of a motor vehicle, comprising a sensory system for providing a signal indicative of the seating position of the passenger in the seat of the motor vehicle; and an arrangement for outputting at least one instruction for adjusting the seat as a function of the signal from the sensory system.***" In column 6, lines 10-34, Breed discloses a scenario wherein once a vehicle occupant sits in seat 110 of Figure 1, headrest 111, is moved up and down, so that ultrasonic sensor 120 can find the top of the passenger's head. Once the height of the head is determined, control circuit 150 determines the appropriate position of the seat, signals in response to the occupant's height, or system sensors, are sent to motors 191-193, and the seat is moved to the appropriate location. The seat is adjusted, as a function of the height of the passenger.

4. As for claim 4, Breed teaches the use of an ultrasonic sensor, shown in Figure 1, as element 120, which is in fact an acoustic sensor. Furthermore, column 8, lines 45-50, disclose that the system of Breed could easily utilize optical transducers for the purpose of achieving desired seat position. Breed teaches both sensor types.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 2, 3, and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 5,748,473 to Breed et al.

7. With regard to claim 2, while the particulars of claim 1 are met by the Breed reference, it does not specifically teach a switch which when activated triggers the drive motors, as a function of the sensor signal. However, it has been shown above, that the drive motors of Breed (191-193), are controlled by circuit 150, which in turn is actuated by the height measurement established by elements 120 and 121. It is therefore the contention of the Examiner, that the system of Breed adjust the seat position automatically in response to the sensor system, and that a switch, manual or otherwise, utilized for the purpose of completing a circuit to adjust a seat position is a matter of design choice, and therefore an obvious embodiment to one of ordinary skill in the art. In addition, the Breed reference teaches (column 6, lines 47-55) that if the position of seat selected by the algorithm is undesirable to the occupant, control switches 180 and 182, of Figure 1, can be used to adjust the seat and headrest manually.

8. As for claim 3, support rods 165 and 116, servos 160 and 170, as well as motors 191-193, shown in Figure 1, and disclosed in column 1 through 2, are found in the head

rest, the back rest, and the seat pad, respectively, and are all utilized to change the position of the seat, or driving devices.

9. With regard to claim 5, the instruction is output to the passenger by way of automatically adjusting the seat to the desired, preferred, or optimal position, based on calculations and other manual adjustments previously made by the passenger. It is also believed, although Breed does not specifically disclose such, that adjustments to the seat position of Breed are made prior to operating the motor vehicle, or at predefined points in time, and therefore would have been obvious to one of ordinary skill in the art to optimize the seat position at engine start up, to ensure the safety of the driver as well as passengers and other motor vehicles.

### *Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to George A Bugg whose telephone number is (571) 272-2998. The examiner can normally be reached on Monday-Thursday 9:00-6:30, and every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeff Hofsass can be reached on (571) 272-2981. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

George A Bugg  
Examiner  
Art Unit 2636

January 11, 2005



JEFFERY HOFSSASS  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2600